

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

_____)	
JACQUES HEDGPETH,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-0336
)	
ARCHSTONE SMITH COMMUNITY,)	
LLC, <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

ORDER

This matter comes before the Court on Defendant Kone, Inc.'s (Kone) Motion to Dismiss Counts V and "V" of Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6). Kone's present motion only seeks to dismiss the fifth and sixth counts of Plaintiff's Complaint. The fifth count, titled "RES IPSA LOQUITUR - KONE INC. (USA)," and the sixth count, titled "RES IPSA LOQUITUR -KONE AND ?OR . AECGSRONE," both state claims for res ipsa loquitur. However, res ipsa loquitur is not a separate cause of action under Virginia law, but an evidentiary presumption in a negligence case that may shift the burden of production of evidence to the tortfeasor. Easterling v. Walton, 208 Va. 214, 217-18 (1967). Therefore, it appearing to the Court that the fifth and sixth counts of Plaintiff's Complaint fail "to state a claim upon which relief can be granted," Fed. R. Civ. P.

12(b)(6), it is hereby

ORDERED that Defendant Kone's Motion to Dismiss Counts V and "V" of Plaintiff's Complaint is GRANTED, and the fifth and sixth counts of Plaintiff's Complaint, as referenced above, are DISMISSED.

/s/

CLAUDE M. HILTON
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
April 28, 2006